

## **CHAPTER 13 MISCELLANEOUS REQUIREMENTS AND PROCEDURES – JUNE 2012**

### **Hon. Vincent P. Zurzolo** **U.S. Bankruptcy Judge, Central District of California**

Roybal Federal Building, 255 E. Temple St. #1360, Los Angeles, CA 90012 (213)894-3755

#### **A. JUDGE'S COPIES NOT NEEDED**

Judge's copies, as defined in the LBR, are **not needed** for many chapter 13 documents. Most are identified in Court Manual Appendix F. Others are items Judge Zurzolo does not need, and will just end up in the recycle bin. Save paper, postage, and your office staff's time by not sending these.

\* **Case commencement documents** - Please see Court Manual section 2.1(f) to identify a long list of "case commencement" documents. It's all of the obvious documents, plus others including the RARA, the chapter 13 plan, any amendments to case commencement documents, and the Notice of Section 341(a) Meeting and Hearing on Confirmation of Chapter 13 Plan.

\* **Declarations re Preconfirmation Payments involving secured debt** – Other chapter 13 judges may still require these.

\* **Declarations re Filing of Tax Returns and Domestic Support Obligations** – Other chapter 13 judges may still require these.

\* **Non-hearing motions filed under LBR 3015-1(w) (1) and/or LBR 9013-1(o)** – Please do not send a judge's copy until after you file F 9013-1.2.DECLARATION.NO.HEARING, indicating that the proper notice and time for response was given, and no responses were received. Please review Court Manual Appendix I (eye) for giving respondents an extra 3 days to respond.

\* **LOU orders on any motion, application or stipulation** – By January 2013, LBR 5005-2(d) and the Court Manual will be amended to indicate that a judge's copy of any LOU order is not needed. Please discontinue sending these effective immediately.

#### **B. JUDGE'S COPIES NEEDED – LBR 5005-2(d) and Court Manual Appendix F**

1) A judge's copy means **ALL** of the following:

\* **ONE** copy – do not send multiple copies of the same document. Please resist the old habit of sending two copies. Remember, the goal is to send one copy to one place (i.e. to the judge).

\* **STAPLED** or **BOUND** – Would you want to read something that isn't bound? Some parties continue to send it unbound, but that was the method the court wanted when court staff scanned documents onto the docket. You already filed it electronically, and therefore we won't be scanning it.

\* **TABS FOR ALL EXHIBITS AND DECLARATIONS** – Please, put a separate tab to identify each declaration and each separate authenticated exhibit. We aren't trying to make your life harder. We want to be able to quickly and easily reference all of the information you ask us to read. It's for everyone's benefit that the court can access your evidence easily.

## 2) Common mistakes with judge's copies:

\* Declaration of service/non-opposition under LBR 3015-1(w)(3) and LBR 9013-1(o)(4) does not contain a copy of the underlying motion/application.

\* Stipulation to continue a hearing, or a stipulation which resolves a motion, is not delivered to the judge or is delivered so close to a hearing that it is not possible for the court to review and act upon the stipulation. Plan on attending the hearing unless a tentative ruling is posted that waives appearances.

\* A document relates to a hearing or adversary proceeding status conference, but the relevant date is not in the caption of the document. We want to prioritize and make sure the papers you file are timely considered for a hearing. Even though a hearing may not be required (for example) to rule on a stipulation, if the stipulation moots the need for a hearing, or requests to continue the hearing, put the relevant date in the caption. Otherwise, your order will be marked unused and there may be a delay.

## C. VALUATION OF REAL PROPERTY and PERSONAL PROPERTY – FRBP 3012 and 11 U.S.C. § 506(a)

To determine whether to treat a claim as secured or unsecured, a party may seek a court order setting the value of real property or personal property collateral. Judge Zurzolo has created a form motion and order that are available on his page of the court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov).

### **VZ-MOTION.VALUATION** **VZ-ORDER.VALUATION**

For debtor's attorney's who have previously focused on seeking a court order to avoid a junior lien on debtor's principal residence, it may be more expedient and efficient to first determine the value of the real property. Then, if a debtor completes a chapter 13 case and obtains a discharge, at that time seek a judgment avoiding the lien in an adversary proceeding.

## D. AVOIDING JUNIOR LIENS ON DEBTOR'S PRINCIPAL RESIDENCE – ADVERSARY PROCEEDING REQUIRED

If you seek avoidance of a fully unsecured lien, an adversary proceeding is required per FRBP 7004. Judge Zurzolo mandates the use of the following LBR forms:

### **F 4003-2.5.COMPLAINT** **F 4003-2.5.DEFAULT.MOTION** **F 4003-2.5.DEFAULT.JUDGMENT**

If the adversary proceeding is settled by stipulation, **DO NOT USE** F 4003-2.4.ORDER. That form is used when a judge allows lien avoidance by motion instead of by adversary proceeding. Instead, file the stipulation with all signatures. Then lodge a very simple order approving the stipulation. Do not reinsert the terms of the stipulation into the order.

## **E. MOTION TO CONTINUE THE STAY – LBR Form F 4001-1.M.IS**

### **30 DAY DEADLINE TO CONDUCT A HEARING**

11 U.S.C. § 362(c)(3) mandates that a hearing take place within 30 days of the petition date when an individual seeks to continue the stay beyond 30 days. Many debtors miss this deadline because they don't file their motion right away, and there isn't time to give 21 days notice of a hearing. Or, even when a debtor files the motion right after commencing the bankruptcy case, sometimes the court's calendar does not have a hearing date available within the 30 day time period. Based upon the discussion below, Judge Zurzolo does not think there is cause to set a hearing on less than regular notice. The court does not have authority to grant this type of motion if it is heard beyond the 30 day deadline.

In addition, the plain language of 11 U.S.C. § 362(c)(3)(A) provides that the stay of 11 U.S.C. § 362(a) terminates (1) only "with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease" and (2) only "with respect to the Debtor." However, the Bankruptcy Appellate Panels for the First and Tenth Circuits<sup>1</sup> and the majority of courts to consider the issue<sup>2</sup> conclude, as Judge Zurzolo does, that the stay of 11 U.S.C. § 362(a) remains in place as to property of the bankruptcy estate. As the bankruptcy estate includes the property subject of the motion and generally encompasses the majority of the Debtor's property per 11 U.S.C. § 541, no emergency is presented by an 11 U.S.C. § 362(c)(3)(A) stay termination.

## **F. EFFECT OF DISMISSAL OF BANKRUPTCY CASE**

**1) File Notice of Dismissal of Adversary Proceeding** – Generally an adversary proceeding becomes moot if the bankruptcy case is dismissed. Please file a Notice of Voluntary Dismissal [FRBP 7041(a)] so that the clerk may close the adversary proceeding.

**2) Motion to Vacate Dismissal Order or Vacate Restriction Against Filing a New Case** – Read the dismissal order before filing a motion. If a dismissal order contains a prohibition under 11 U.S.C. § 349 of filing a new case without a court order, a motion is required and a hearing on 21 day notice to all creditors. If a dismissal order contains a prohibition under 11 U.S.C. 109(g) of being a debtor for 180 days, a motion is required and LBR 9013-1(o) must be satisfied. This means scheduling a hearing on 21 days notice, or using the procedure of LBR 9013-1(o). Do not file a motion that fails to identify the procedural context in which relief is sought. If LBR 9075-1(b) is invoked, file the proper LBR form and required declarations from the party with personal knowledge of facts asserted regarding the alleged emergency. A self-created emergency does not constitute cause under LBR 9075-1(b).

## **G. ATTORNEY APPEARANCE REQUIRED AT CHAPTER 13 HEARINGS**

**1) Telephonic Appearances are rarely approved for hearings on chapter 13 calendar** – this includes hearings on confirmation and miscellaneous motions.

**2) Appearances Waived in Two Situations** – If the chapter 13 trustee has agreed to recommend confirmation by consent, debtor's counsel is excused from an appearance. If a tentative ruling has been posted granting a miscellaneous motion without the need to appear, appearances are waived.

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1 . *In re Jumpp*, 356 B.R. 789 (BAP 1st Cir. 2006), *In re Holcomb*, 380 B.R. 813 (BAP 10th Cir. 2008).

2 See *In re Stanford*, 373 B.R. 890, 894-95 (Bankr. E.D. Ark. 2007) discussing the split in authority and listing the numerous courts following the majority view.